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OFFICE OF PETITIONS

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| In re Application of | : | |
| Morrison et al. | : | |
| Application No. 09/895,011 | : | DECISION ON PETITION |
| Filed: June 28, 2001 | : | |
| Attorney Docket No.: 026735-00004 | : | |
| (068.0003) | : | |
| Title of Invention: System for Facilitating | : | |
| Pricing, Sale Distribution of Fuel to | : | |
| Customer | : | |

This is a decision on the renewed petition under 37 CFR 1.137(b), filed September 27, 2005 to revive the above-identified application. On renewed petition, petitioner advances a new argument that the February 10, 2004 Office action was never received and requests that the time period for reply be restarted. This request will be treated under 37 CFR 1.181.

This above-identified application became abandoned for failure to timely file a response to a non-final Office Action which was mailed on February 10, 2004. The non-final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on May 11, 2004. A Notice of Abandonment was mailed on October 20, 2004.

This petition under 37 CFR 1.181 is Dismissed.

This petition under 37 CFR 1.137(b) is Granted.

Petition under 37 CFR 1.181

Petitioner asserts that the non-final Office Action mailed on February 10, 2004 was never received. Petitioner also states that a Notice of Abandonment mailed on October 20, 2004 was returned as undeliverable to the USPTO on October 29, 2004.

A review of the record indicates no irregularity in the mailing of the Notice, and in the absence of any irregularity in the mailing, there is a strong presumption that the Office action was properly mailed to the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹ The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the non-final Office action may have been lost after receipt rather than a conclusion that the non-final Office action was lost in the mail.

Here, petitioner has failed to present any evidence that the non-final Office action was not received. The non-final Office action was mailed to the correspondence address of record. The Office will direct all notices, official letters, and other communications relating to the application to the correspondence address. See 37 CFR 1.33(a). A change of correspondence address was not submitted to the Office until January 21, 2005. If the non-final office action was not received because petitioner failed to timely submit a change of correspondence address, withdrawal of the holding of abandonment is not warranted. Further evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See Lorenz v. Finkl, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); Krahn v. Commissioner, 15 USPQ2d 1823, 1824 (E.D. Va 1990); In re Application of Fischer, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).

Accordingly, the request to withdraw the holding of abandonment and restart the time period for reply is dismissed.

Petition under 37 CFR 1.137(b)

The requirements for a grantable petition under 37 CFR §1.137(b) have been met. This petition is hereby Granted.

It should be noted this petition was submitted with sufficient time in which a five month

¹M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

extension of time was available. The petition decision of March 14, 2005 provided petitioner with an extendable two month period of reply. Pursuant to 37 CFR 1.136 (a) an additional 5 months could have been purchased. However, since the five month extension of time could not be charged because Erik B. Cherdak is not an authorized user of deposit account 01-2300, the petition to revive will be treated.

This application is being forwarded to Technology Center 3600 for further processing of the Amendment submitted with the instant petition.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.



Charlema R. Grant

Petitions Attorney

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